UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

--X
HALLMARK LICENSING, LLC and
HALLMARK MARKETING COMPANY, LLC,

Plaintiffs,

- against -

SQUARE PEG LOGISTICS, LLC,

Defendant.
--X

Civil Action No.:

COMPLAINT

Plaintiffs Hallmark Licensing, LLC and Hallmark Marketing Company, LLC (collectively, "Plaintiffs" or "Hallmark") allege the following facts in support of the claims stated herein against Defendant Square Peg Logistics, LLC ("Defendant" or "Square Peg").

NATURE OF THE CASE

1. This action arises out of the unlawful possession of and/or unauthorized resale by Defendant Square Peg of products bearing the federally registered and famous trademark, HALLMARK. As a result of its decision to close its distribution center in Enfield, Connecticut ("Enfield"), Plaintiffs entrusted significant quantities of greeting cards and related products bearing the HALLMARK trademarks to Northstar Pulp & Paper Company, Inc. ("Northstar"), a full service recycling and trash hauling company, for destruction through recycling. These products included greeting cards for seasonal holidays like Christmas, Mother's Day, Graduation, and Easter, as well as cards for "everyday" occasions like birthdays and anniversaries, all bearing the federally registered and famous trademark, HALLMARK (hereinafter "HALLMARK Brand Products").

2. Consistent with a written agreement between Hallmark Cards, Incorporated ("Hallmark Cards"), and Northstar and the prior practice between the parties, Northstar would pick up HALLMARK Brand Products for the sole purpose of destroying through recycling those products which Hallmark determined it wished to destroy rather than sell.

3. Rather than destroying them through recycling, and unbeknownst to Plaintiffs, Northstar instead sold the HALLMARK Brand Products to Square Peg in a negotiated, paperless transaction for a mere fraction of their fair market value (the "Northstar-Square Peg Transaction").

4. Through the Northstar-Square Peg Transaction, Square Peg acquired approximately 73 truckloads of HALLMARK Brand Products from Northstar. Although Square Peg subsequently sold to third parties certain of the HALLMARK Brand Products it acquired from Northstar, Square Peg is currently in possession, custody and control of approximately 50 truckloads of HALLMARK Brand Products in one or more warehouse facilities located in and around Monson, Massachusetts.

5. Since Square Peg was not a greeting cards distributor, the parties to the Northstar-Square Peg transaction expected Square Peg to sell Hallmark Brand Products to third parties. One of the third parties to whom Square Peg sold Hallmark Brand Products is Dickens, Inc. ("Dickens"), a company based in Long Island, NY.

6. Square Peg's actions in selling the Hallmark Brand Products have caused and will continue to cause Plaintiffs significant harm, including but not limited to the loss of control of the HALLMARK mark, damage to the Hallmark brand, disruption to Hallmark's carefully planned distribution, loss of goodwill, loss of customers, lost sales and confusion in the marketplace.

7. Hallmark further seeks injunctive relief against Square Peg, enjoining it and its principals from selling or offering to sell any of the HALLMARK Brand Products in Square Peg's

possession, custody or control until after a final, conclusive disposition of a matter filed by Hallmark against Dickens in the Eastern District of New York captioned, *Hallmark Licensing, LLC and Hallmark Marketing Company, LLC v. Dickens Inc., (ED NY)* No. 2:17-cv-02149 (LDW), including any appeals thereof (the "NY Action"). Pending the final disposition of the NY Action, Hallmark also seeks the right to conduct periodic inspections of the HALLMARK Brand Products in Square Peg's possession.

PARTIES

8. Plaintiff Hallmark Licensing, LLC is a Kansas limited liability company with its principal place of business located in Kansas City, Missouri.

9. Plaintiff Hallmark Marketing Company, LLC is a Kansas limited liability company with its principal place of business located in Kansas City, Missouri.

10. Defendant Square Peg Logistics, LLC is a Massachusetts limited liability company with its principal place of business located in Springfield, Massachusetts.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1). There is complete diversity of citizenship between the parties, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

12. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331. Plaintiffs asserts causes of action arising under the federal Lanham Act, 15 U.S.C. § 1114 and § 1125.

13. This Court has personal jurisdiction over Square Peg because Square Peg is a Massachusetts limited liability company with its principal place of business in Massachusetts.

14. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this district.

FACTUAL BACKGROUND

I. Hallmark Owns An Incontestable Federally Registered Trademark

15. Hallmark and its related companies create and distribute personal expression products such as greeting cards under its well-known and famous HALLMARK trademark. These products are sold throughout the United States in Hallmark specialty stores and in other retail outlets. Hallmark is an industry leader for personal expression products and has developed a strong reputation as a supplier of high quality products.

16. Since at least as early as 1949, Hallmark-related entities have used the HALLMARK mark & crown design shown below on personal expression products and related retail store services:

17. To protect the Hallmark brand, Hallmark Cards secured federal trademark registration for numerous trademarks. Since May 30, 1950, Hallmark Cards or a subsidiary has owned an incontestable federal registration with the United States Patent and Trademark Office for its trademark "HALLMARK" for "greeting cards," Reg. No. 525,798. *See* Exhibit A.

18. In 1995, Hallmark Cards transferred ownership of the mark to its wholly-owned subsidiary, plaintiff Hallmark Licensing, LLC. Hallmark Licensing, LLC licenses the use of the HALLMARK mark to plaintiff Hallmark Marketing Company, LLC.

19. Over many decades, Hallmark has spent millions of dollars in the marketing and advertising of its products and related retail store services under its HALLMARK marks. Hallmark continues to nationally advertise and market its products and associated retail store

services using the HALLMARK mark through print, radio, television, digital and social advertising channels, as well as its website and authorized retailers.

20. Hallmark's products are among the top-selling personal expression products in the United States, and the ongoing success of these products is due, at least in part, to the quality of HALLMARK Brand Products as well as Hallmark's extensive and continuous efforts to promote its products and related retail store services under the HALLMARK mark.

21. The HALLMARK mark is one of the most widely recognized brands in the nation. As a testament to Hallmark's strong brand recognition, in a 2016 US RepTrak® Report, which measures the reputation of the most highly regarded companies in the United States, Hallmark received a score of 85.1 out of 100, second only to Amazon and surpassing companies like Kellogg's, Johnson + Johnson, SONY, and the Walt Disney Company. *See* Exhibit B, at p. 9. More recently, Hallmark was named the "Greeting Card Brand of the Year" by Harris Poll's 29th annual survey for the seventh year in a row. *See* Exhibit C. To maintain this pre-eminent position, Hallmark takes measures to control the quality of both the manufacture and distribution of its products. These efforts ensure that consumers who see the HALLMARK mark at retail are assured that Hallmark stands behind these products.

22. The Hallmark brand is synonymous with high quality. When consumers encounter the HALLMARK mark in the marketplace, they are assured that the products bearing the HALLMARK mark are of the utmost quality. Indeed, the fame and goodwill associated with the Hallmark brand is one of Hallmark's most valuable assets.

23. Hallmark is vigilant in protecting its mark from trademark infringement and trademark dilution.

24. As part of its business model and to further control the quality of HALLMARK Brand Products, Hallmark has established an authorized retailer network that it refers to as the Hallmark Gold Crown Network, which currently consists of 319 company-owned stores and 1,497 independently-owned stores, which operate pursuant to licensing agreements. Gold Crown Stores are required to meet specific standards that help provide consumers with an enjoyable and consistent shopping experience. These over 1,800 stores represent Hallmark's premiere channel of distribution. They carry a wide selection of Hallmark greeting cards and related items, which they purchase directly and only from Hallmark.

25. In addition to Gold Crown Stores, Hallmark sells its HALLMARK Brand Products to non-Gold Crown retailers of its choosing, both big-box retailers and "mom and pop shops" who offer for sale and carry a select portion of the Hallmark card lines and products. Such retailers include Walgreens, CVS, Walmart and Kroger. This extensive retailer network further establishes the strength and foothold Hallmark maintains in its industry and the minds of consumers.

II. Hallmark Decides To Close The Enfield Distribution Center, Generating Millions of HALLMARK Brand Products For Northstar To Recycle

26. On July 7, 2015, Hallmark announced its decision to close its Enfield Distribution Center effective on or about June 30, 2016. During the closing process, Hallmark determined that millions of greeting cards and related paper products, then stored at Enfield and all bearing the HALLMARK trademark, should be disposed of through recycling.

27. As a result, and consistent with its 2012 agreement with Northstar and the prior practice between the parties, Hallmark entrusted Northstar with millions of HALLMARK Brand Products from the Enfield Distribution Center for the sole purpose of destroying them through recycling. Northstar is a fifth-generation, family-run recycling and waste management business. According to an April 16, 2014 MassLive internet article, Northstar handles, among other items,

"shredding company product overruns, such as the cardboard cover of a board game or *greeting cards, to keep them from getting in the hands of the public.*" *See* Exhibit D, at p. 2 (emphasis added).

28. Hallmark made deliberate decisions to either destroy through recycling HALLMARK Brand Products stored at Enfield or to transfer HALLMARK Brand Products to its other Distribution Center in Liberty, Missouri ("Liberty") for future sale to the market. The HALLMARK Brand Products selected for destruction at Northstar were (i) quantities of product in excess of what could be efficiently transferred and/or stored at Liberty; (ii) obsolete or "discontinued" product, or product with outdated Stock Keeping Units ("SKUs"); (iii) product that contained both U.S. and Canadian pricing that made it undesirable for transfer to Liberty; or (iv) product that was otherwise deemed by Hallmark to be of insufficient quantities to justify shipment rather than destruction.

29. Hallmark did not intend for these HALLMARK Brand Products to be resold to the market.

III. Northstar sells HALLMARK Brand Products to Square Peg

30. Rather than destroy the HALLMARK Brand Products through recycling as it contracted to do, Northstar instead secretly and wrongfully sold them to Square Peg.

31. Square Peg is a limited liability company, which was incorporated on November 30, 2015. Square Peg had never been in the greeting card industry before, nor had it ever purchased products from Northstar.

32. The Northstar-Square Peg Transaction was a transaction for which Square Peg paid a mere fraction of the fair market value of the HALLMARK Brand Products which it purchased. There is no written documentation evidencing it, nor is there a formal contract respecting its terms.

Further, there are no emails or text messages between the parties concerning the Northstar-Square Peg Transaction.

33. Square Peg acquired approximately 73 truckloads of HALLMARK Brand Products from Northstar through the Northstar-Square Peg Transaction, some of which have already been sold the third parties, such as Dickens. Approximately 50 truckloads of Hallmark Brand Products are currently stored in Square Peg's facility in and around Monson, Massachusetts. Square Peg sold the remaining truckloads to various companies, such as Dickens who, in turn, have sold and offered to sell HALLMARK Brand Products to the market.

IV. Square Peg's Wrongdoing Has Caused, And Will Continue to Cause, Immediate and Irreparable Harm to Hallmark

34. Through Square Peg's unlawful actions, the quality control measures structured and effectuated by Hallmark to maintain control over its distribution channels and brand image in the minds of consumers that it has worked tirelessly to maintain over several decades have been circumvented and disrupted. In so doing, Square Peg is effectively debasing the Hallmark brand as well as damaging the reputation and goodwill associated with Hallmark's long-standing and famous marks.

35. Although the goods Square Peg sold to third parties bear the HALLMARK mark, they are not genuine Hallmark products, as Hallmark never authorized their sale in the marketplace.

36. Square Peg's conduct threatens to cause, and has caused, confusion in the marketplace and results in lost sales, a loss of goodwill, and disruption and interruption of Hallmark's carefully planned distribution through its authorized retailers.

CAUSES OF ACTION

COUNT I
Trademark Infringement Under 15 U.SC. § 1114

37. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

38. Defendant used the HALLMARK mark in connection with the sale of cards without Hallmark's authorization and with the specific intent to cause consumers and others in the trade to believe they were purchasing genuine Hallmark goods when in reality they were purchasing products Hallmark intended to destroy.

39. Defendant's unauthorized use of the HALLMARK mark is likely to cause confusion, or to cause mistake, or to deceive or to cause those encountering products sold by Defendant to believe that the same goods originate from or are in some manner endorsed, sponsored, or approved by Hallmark in violation of the Lanham Act.

40. Defendant's wrongful conduct has deprived Hallmark of, among other things, the right to control the reputation and goodwill associated with its trademark. Defendant's conduct is, in all instances, willful and outrageous.

41. Unless Defendant is enjoined from engaging in its wrongful conduct, Hallmark will suffer further irreparable injury and harm, including to its goodwill and reputation, for which it has no adequate remedy of law. It will further suffer other economic losses and compensable damages.

COUNT II
Trademark Dilution Under 15 U.SC. § 1125(c)

42. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

43. The HALLMARK mark is inherently distinctive, has acquired substantial goodwill and secondary meaning, and is famous within the meaning of 15 U.S.C. § 1125(c).

44. Defendant sold cards bearing the HALLMARK mark to third parties.

45. Upon information and belief, Defendant acted with knowledge of the fame and reputation of HALLMARK's mark with the purpose of usurping such rights and to willfully and intentionally confuse, mislead, and deceive members of the public.

46. Defendant's actions have in the past and are likely in the future to continue to dilute, blur and tarnish the distinctive quality of the HALLMARK mark, and lessen the capacity of the HALLMARK mark to identify and distinguish the company's products.

47. Defendant's acts constitute willful trademark dilution pursuant to 15 U.S.C. § 1125(c), and Hallmark has been, and is likely to continue to be, damaged by these acts.

48. Unless Defendant is restrained, Hallmark will continue to suffer damages and injury to its reputation and goodwill. It will further suffer other economic losses and compensable damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs demand an Order and judgment in Plaintiffs' favor and against Defendant:

(a) Enjoining Defendant and its principals from use of the HALLMARK Brand Products or any mark confusingly similar to Hallmark's;

(b) Enjoining Defendant and its principals from selling, offering to sell, advertising for sale, transferring, disposing or in any manner dealing in any of the HALLMARK Brand Products within their possession, custody or control until thirty (30) days after a final determination is issued in the NY Action;

(c) Permitting Plaintiffs to conduct periodic inspections of the HALLMARK Brand Products in Defendant's possession, custody and control;

(d) Directing Defendant to pay compensatory damages to Plaintiffs in an amount to be proven at trial;

(e) Directing Defendant to disgorge all payments wrongfully and unjustly received;

(f) Directing Defendant to pay punitive damages in the maximum amount permitted by law;

(g) Directing Defendant to pay statutory damages for trademark infringement and dilution in the maximum amount permitted under the federal Lanham Act;

(h) Directing Defendant to pay costs, attorney fees, and prejudgment and post judgment interest for violations of the federal Lanham Act;

(i) Directing Defendant to pay treble damages and its profits for violation of the federal Lanham Act; and

(j) Such further relief as the Court may deem just and equitable.

Dated: May 31, 2017

Respectfully submitted,

HALLMARK LICENSING, LLC and HALLMARK MARKETING COMPANY, LLC,

By their attorneys,

/s/ Jessica Ragosta Early

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